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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/594,351	03/09/2009	Alan Harold Lettington	06007/42358	5575
4743 7590 03/22/2011 MARSHALL, GERSTEIN & BORUN LLP 233 SOUTH WACKER DRIVE 6300 WILLIS TOWER CHICAGO, IL 60606-6357				
EXAMINER FONT, FRANK G				
ART UNIT 2872		PAPER NUMBER		
NOTIFICATION DATE 03/22/2011		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mgbdocket@marshallip.com

Office Action Summary

Application No.

10/594,351

Applicant(s)

LETTINGTON, ALAN HAROLD

Examiner

FRANK G. FONT

Art Unit

2872

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 June 2008 and 26 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-942)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 8, the multiple recitations to “the rotary axis” have not been distinguished from “a central axis” recited previously. Are they the same or different? The recitation “said first polarization direction” does not have a clear antecedent. The recitation “such radiation” (second occurrence) can refer back to several different “radiations” recited previously. Which one is being referenced? The parenthetical recitation “(as opposed to rotating with the primary drum)” is not regarded as part of the claimed subject matter and should be deleted. The recitation “the arrangement” lacks antecedent basis in the claim. The subsequent recitation to “radiation passing into the drum” can refer back to several different radiations already recited in the claim. Which one is being referenced? The recitations “through whichever said side of the drum is currently facing said field of view”, “passing towards the diametrically opposite side will be plane...”, and the rest of the recitations extending to the end of this claim are inherently indefinite since these process of using method steps represent temporal conditional

recitations which are not proper in a product claim drawn to structural limitations. Applicant should replace all of these indefinite recitations with functional language.

Regarding claim 9, the recitations “said radiation detector” and “said receiver assembly” lack antecedent basis. The recitation “the radiation” can refer back to several different radiations previously claimed. Which one is being referenced? Claim 9 also contains process of using limitations which should be replaced with functional language.

Regarding claim 1, “the arrangement lacks antecedent basis. Both “reflective surfaces” should be distinguished from each other by prefixing with “first”, “second”, etc. It is not clear which limitation is being referred to by “the latter”. The recitation “a further part of the apparatus” is inherently indefinite since it precludes determining what part of the apparatus is being referred to as containing the structure (receiver(s)). The parenthetical recitations are not considered as limiting subject matter and should be deleted and their substance incorporated as positively claimed structure. The word “these” is indefinite (unclear as to what it is referring to) and should be replaced with the limitations it is referring to. Claim 1 also contains process of using limitations which should be replaced with functional language.

Regarding claims 2-7 and 10-15, these claims contain similar problems to those already pointed out with respect to claims 1, 8 and 9 above, and require correction.

Allowable Subject Matter

Claim 8 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and additional claims 9-15 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph.

The following is a statement of reasons for the indication of allowable subject matter: the prior art either alone or in combination does not disclose nor reasonably render obvious the scanning apparatus as set forth in independent claim 8 wherein the drums are hollow and the drums transmit/reflect plane polarized radiation, in combination with the rest of the claimed limitations.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned

with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-7 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent No. 7,154,640 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claim are broader in scope than the conflicting claims. All of the limitations of the instant claims are found in the conflicting claims, although in different combinations. For example, conflicting claim 1 contains several limitations not present in instant claim 1, such as (1) an additional reflection of the radiation before being reflected towards the receiver(s) and (2) substantially linear scan et seq. Conflicting claim 9 contains limitations that are in instant claims 1-5. Conflicting claims 1-3 match instant claims 6 an 7.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sillitto discloses the use of two drums reflecting polarized radiation; however, the drums are not hollow and the reflections are not internal. Anderton et al. and Lettington (6 documents) are familiar to applicant.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FRANK G. FONT whose telephone number is (571)272-2415. The examiner can normally be reached on M-Th 10:00 AM - 8:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephone B. Allen can be reached on (571) 272-2434. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Frank G Font/
Primary Examiner, Art Unit 2872

March 14, 2011